

Letter of Findings Number: 04-20110010P
Sales Tax - Penalty
For the Period 2007 - 2009

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ISSUE

I. Tax Administration–Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer "is a wholly-owned subsidiary of [Company Y]" which operates several retail stores. Taxpayer was audited by the Indiana Department of Revenue ("Department") for Sales/Use Tax. A proposed assessment, including a ten percent penalty and interest, was issued by the Department. Taxpayer subsequently provided additional documentation to the Department, and a Supplemental Audit was performed. In lieu of an administrative hearing, Taxpayer submitted a written argument. After a review by the Department of the Taxpayer's written argument and the information in the file, this Letter of Findings results. More facts will be provided below as needed.

I. Tax Administration–Penalty.

DISCUSSION

Taxpayer protests the imposition of the ten percent negligence penalty. In a letter to the Department, Taxpayer states the following in part:

[Taxpayer] makes every effort to comply with the tax laws and regulations of each taxing authority. The proposed tax of \$5,209.13 is less than a two tenths of 1[percent] of the more than \$2,700,000 remitted during the audit period. Each month the expenditures in various ledger accounts are examined by reviewing invoices and other documentation. Use tax is self assessed where deemed applicable.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides in relevant part:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

As noted, Taxpayer's original audit was adjusted after a Supplemental Audit. That Supplemental Audit reduced Taxpayer's base tax amount. Taxpayer protested the remaining negligence penalty. Based upon Taxpayer's argument and information, the Department finds that Taxpayer has established it exercised ordinary business care and prudence under [45 IAC 15-11-2\(c\)](#). Thus the penalty should be waived.

FINDING

Taxpayer's protest of the penalty is sustained.

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